

AMENDED IN ASSEMBLY JUNE 20, 2006

AMENDED IN SENATE APRIL 21, 2005

SENATE BILL

No. 667

Introduced by Senator Migden

February 22, 2005

An act to amend ~~Section 10501~~ of Sections 10500, 10502, and 10504.5 of, and to add and repeal Article 1.5 (commencing with Section 10506.4) to Chapter 2.1 of Part 2 of Division 2 of, the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 667, as amended, Migden. Public contracts: competitive bidding: University of California.

(1) Existing law requires the Regents of the University of California, except as specified, to let any contract for a project to the lowest responsible bidder. For these purposes, "project" includes the erection, construction, alteration, repair, or improvement of any University of California structure, building, road, or other improvement that will exceed in cost a total of \$50,000.

This bill would increase the threshold amount for a "project" to \$100,000.

(2) Existing law requires the Regents of the University of California to give public notice of a project to bidders by publication once a week for at least 2 consecutive weeks next preceding the day set for the receiving of bids.

This bill would instead require the regents to give public notice of a project by publication twice within the 60-day period preceding the day set for the receiving of bids.

(3) Existing law provides that where the nature of the work, in the opinion of the Regents of the University of California, is such that the application of all of specified provisions of law relating to competitive bidding by the university is not required in connection with that work, and the cost of the project does not exceed \$100,000, the regents shall solicit bids in writing and shall award the work to the lowest responsible bidder or reject all bids.

This bill would provide that the Regents of the University of California are not required to solicit bids in writing and award the contract to the lowest responsible bidder if the value of a minor capital outlay project is one for which the services of the Department of General Services are not required.

(4) Existing law authorizes the Regents of the University of California to enter into contracts for the erection, construction, alteration, repair, or improvement of a university structure and requires the regents to award contracts for projects to the lowest responsible bidder.

This bill would, until January 1, 2012, establish the Best Value Construction Contract Pilot Program which authorizes 4 University of California campuses, selected by the President of the University of California, to award contracts based on the best value, to the university, as defined. This bill would require the university to observe specified procedures when awarding best value contracts, as provided. This bill would require, on or before January 1, 2010, the Regents of the University of California to submit a report to the Joint Legislative Committee on the Budget regarding the pilot program, to include specified information.

(5) This bill requires bidders to verify specific information under oath, thereby imposing a state-mandated local program by expanding the scope of an existing crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law requires the Regents of the University of California, except as specified, to let any contract for a project to the lowest responsible bidder. For these purposes, “project” includes the erection, construction, alteration, repair, or improvement of any University of~~

~~California structure, building, road, or other improvement that will exceed in cost a total of \$50,000.~~

~~This bill would allow the University of California to select, as provided, the lowest responsible bidder for a project on the basis of price, qualifications, relevant experience, and demonstrated management competency, as determined by the university. This bill would require the university, if this method is used, to adopt and publish procedures and criteria used in the selection process.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 10500 of the Public Contract Code is*
2 *amended to read:*

3 10500. As used in this article, “project” includes the erection,
4 construction, alteration, repair, or improvement of any University
5 of California structure, building, road, or other improvement that
6 will exceed in cost, including labor and materials, a total of ~~fifty~~
7 ~~thousand dollars (\$50,000)~~ *one hundred thousand dollars*
8 *(\$100,000).*

9 *SEC. 2. Section 10502 of the Public Contract Code is*
10 *amended to read:*

11 10502. The Regents of the University of California shall give
12 public notice of a project to bidders by publication ~~once a week~~
13 ~~for at least two consecutive weeks next~~ *twice within the 60-day*
14 *period* preceding the day set for the receiving of bids as follows:

15 (a) In one newspaper of general circulation published in the
16 county in which the major portion of the project is located and in
17 one such trade paper circulated in the county in which the major
18 portion of the work is to be done.

19 (b) The notices shall state the time and place for the receiving
20 and opening of sealed bids, describe in general terms the work to
21 be done, and describe the bidding mode by which the lowest
22 responsible bidder will be selected.

23 *SEC. 3. Section 10504.5 of the Public Contract Code is*
24 *amended to read:*

25 10504.5. Where the nature of the work, in the opinion of the
26 regents, is such that the application of all of the provisions of this
27 chapter in connection with that work is not required, and the cost

1 of the project does not exceed ~~one hundred thousand dollars~~
2 ~~(\$100,000)~~ the value of a minor capital outlay project for which,
3 pursuant to Section 10108, the services of the Department of
4 General Services are not required, the regents shall solicit bids in
5 writing and shall award the work to the lowest responsible bidder
6 or reject all bids.

7 SEC. 4. Article 1.5 (commencing with Section 10506.4) is
8 added to Chapter 2.1 of Part 2 of Division 2 of the Public
9 Contract Code, to read:

10
11 Article 1.5. Best Value Construction Contracting Pilot
12 Program
13

14 10506.4. (a) This article provides for a pilot program for the
15 University of California when awarding construction contracts,
16 applicable only to those four campuses of the university as
17 designated by the President of the University of California prior
18 to January 1, 2007.

19 (b) The Regents of the University of California shall let any
20 contract for a project pursuant to this article to the lowest
21 responsible bidder or else reject all bids.

22 (c) The lowest responsible bidder may be selected on the basis
23 of the best value to the university, as defined in Section 10506.5.
24 In order to implement this method of selection, the Regents of the
25 University of California shall adopt and publish procedures and
26 required criteria that ensure that all selections are conducted in
27 a fair and impartial manner. These procedures shall conform to
28 the requirements of Sections 10506.6 and 10506.7 and shall be
29 mandatory for the University of California campuses in the pilot
30 program.

31 (d) If one or more of the bids is substantially equal to the
32 lowest bid, and at least one of those bidders is a disadvantaged
33 business enterprise, a women business enterprise, or a disabled
34 veteran business enterprise, the regents may award the contract
35 in accordance with the policies and procedures adopted pursuant
36 to Section 10500.5.

37 (e) If the regents deem it to be for the best interest of the
38 university, the regents may, on the refusal or failure of the
39 successful bidder for a project to execute a tendered contract,
40 award it to the second lowest responsible bidder. If the second

1 *lowest bidder fails or refuses to execute the contract, the regents*
2 *may likewise award it to the third lowest responsible bidder.*

3 *10506.5. For purposes of this article, the following*
4 *definitions apply:*

5 *(a) "Best value" means a procurement process whereby the*
6 *lowest responsible bidder may be selected on the basis of*
7 *objective criteria with the resulting selection representing the*
8 *best combination of price and qualifications.*

9 *(b) "Best value contract" means a contract entered into*
10 *pursuant to the provisions of this article.*

11 *(c) "Best value contractor" means a properly licensed person,*
12 *firm, or corporation that submits a bid for, or is awarded, a best*
13 *value contract.*

14 *(d) "Demonstrated management competency" means the*
15 *experience, competency, capability, and capacity of the proposed*
16 *management staffing to complete projects of similar, size, scope,*
17 *or complexity.*

18 *(e) "Financial condition" means the financial resources*
19 *needed to perform the contract. The criteria used to evaluate a*
20 *bidder's financial condition shall include, at a minimum,*
21 *capacity to obtain all required payment bonds, performance*
22 *bonds, and liability insurance.*

23 *(f) "Labor compliance" means the ability to comply with, and*
24 *past performance with, contract and statutory requirements for*
25 *the payment of wages and qualifications of the workforce. The*
26 *criteria used to evaluate a bidder's labor compliance shall*
27 *include, as a minimum, the bidder's ability to comply with the*
28 *apprenticeship requirements of the California Apprenticeship*
29 *Council and the Department of Industrial Relations, its past*
30 *conformance with such requirements, and its past conformance*
31 *with requirements to pay prevailing wages on public works*
32 *projects.*

33 *(g) "Qualifications" means financial condition, relevant*
34 *experience, demonstrated management competency, labor*
35 *compliance, the safety record of the bidder, and, if required by*
36 *the bidding documents, some or all of the preceding*
37 *qualifications as they pertain to subcontractors proposed to be*
38 *used by the bidder for designated portions of the work.*

1 (h) “Relevant experience” means the experience, competency,
2 capability, and capacity to complete projects of similar size,
3 scope, or complexity.

4 (i) “Safety record” means the prior history concerning the
5 safe performance of construction contracts. The criteria used to
6 evaluate a bidder’s safety record shall include, as a minimum, its
7 experience modification rate for the most recent three-year
8 period, and its average total recordable injury or illness rate and
9 average lost work rate for the most recent three-year period.

10 (j) “University” means the University of California.
11 10506.6. The university shall proceed in accordance with the
12 following when awarding best value contracts under this article.

13 (a) The university shall prepare a solicitation for bids and give
14 notice pursuant to Section 10502.

15 (b) The university shall establish a procedure to prequalify
16 bidders. The information required pursuant to this section shall
17 be verified under oath by the bidder in the manner in which civil
18 pleadings in civil actions are verified. Information submitted by
19 the bidder as part of the evaluation process shall not be open to
20 public inspection to the extent that information is exempt from
21 disclosure under the California Public Records Act (Chapter 3.5
22 (commencing with Section 6250) of Division 7 of Title 1 of the
23 Government Code).

24 (c) Each solicitation for bids shall do all of the following:

25 (1) Invite prequalified bidders to submit sealed bids in the
26 manner prescribed by this article.

27 (2) Include a section identifying and describing the following:

28 (A) Criteria that the university will consider in evaluating
29 bids.

30 (B) The methodology and rating or weighting system that will
31 be used by the university in evaluating bids.

32 (C) The relative importance or weight assigned to the criteria
33 identified in the request for bids.

34 (d) Final selection of the best value contractor shall be done
35 in a manner that prevents cost or price information from being
36 revealed to the committee evaluating the qualifications of the
37 bidders prior to completion and announcement of that
38 committee’s decision.

39 10506.7. Selection of the best value contractor shall be made
40 as follows:

1 (a) *The university shall evaluate the qualifications of the*
2 *bidders based solely upon the criteria set forth in the bidding*
3 *documents.*

4 (b) *The award of the contract shall be made to the bidder*
5 *whose bid is determined, by the university in writing, to be the*
6 *best value to the university. To determine the best value*
7 *contractor, the university shall divide each bidder's evaluated*
8 *price by its qualifications score. The lowest resulting cost per*
9 *quality point will represent the best value bid.*

10 (c) *The university shall issue a written decision of its contract*
11 *award.*

12 (d) *Upon issuance of a contract award, the university shall*
13 *publicly announce its award identifying the best value contractor*
14 *to which the award is made, the project, the project price, and*
15 *the selected best value contractors's score based on the*
16 *evaluation criteria listed in the request for bids. The notice of*
17 *award shall be made public and include the score of the selected*
18 *best value contractor in relation to all other responsive bidders*
19 *and their respective prices. The contract file shall include*
20 *documentation sufficient to support the decision to award.*

21 10506.8. *On or before January 1, 2010, the Regents of the*
22 *University of California shall submit a report to the Joint*
23 *Legislative Budget Committee. The report shall include, but is*
24 *not limited to, the following information:*

25 (a) *A description of the projects awarded using the best value*
26 *procedures.*

27 (b) *The contract award amounts.*

28 (c) *The best value contractors awarded the projects.*

29 (d) *A description of any written protests concerning any*
30 *aspect of the solicitation, bid, or award of the best value*
31 *contracts, including the resolution of the protests.*

32 (e) *A description of the prequalification process.*

33 (f) *The criteria used to evaluate the bids, including the*
34 *weighting of the criteria and an assessment of the effectiveness of*
35 *the methodology.*

36 (g) *If a project awarded under this article has been completed,*
37 *an assessment of the project performance, to include a summary*
38 *of any delays or cost increases.*

39 10506.9. *This article shall remain in effect only until January*
40 *1, 2012, and as of that date is repealed, unless a later enacted*

1 statute, that is enacted before January 1, 2012, deletes or extends
2 that date.

3 SEC. 5. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution because
5 the only costs that may be incurred by a local agency or school
6 district will be incurred because this act creates a new crime or
7 infraction, eliminates a crime or infraction, or changes the
8 penalty for a crime or infraction, within the meaning of Section
9 17556 of the Government Code, or changes the definition of a
10 crime within the meaning of Section 6 of Article XIII B of the
11 California Constitution.

12 SECTION 1. ~~Section 10501 of the Public Contract Code is~~
13 ~~amended to read:~~

14 ~~10501. (a) Except as otherwise provided in this article, the~~
15 ~~Regents of the University of California shall let any contract for~~
16 ~~a project to the lowest responsible bidder or else reject all bids.~~

17 ~~(b) The lowest responsible bidder may be selected on the basis~~
18 ~~of the best combination of price and qualifications, including~~
19 ~~financial condition, relevant experience, and demonstrated~~
20 ~~management competency as determined by the university~~
21 ~~according to published selection standards. In order to implement~~
22 ~~this method of selection, the university shall adopt and publish~~
23 ~~procedures and required criteria that ensure that all selections are~~
24 ~~conducted in a fair and impartial manner. These procedures shall~~
25 ~~be mandatory for any university facility or campus that elects to~~
26 ~~use this method of selection of the lowest responsible bidder.~~

27 ~~(c) If one or more of the bids is substantially equal to the~~
28 ~~lowest bid, and at least one of those bidders is a disadvantaged~~
29 ~~business enterprise, a women business enterprise, or a disabled~~
30 ~~veteran business enterprise, the regents may award the contract in~~
31 ~~accordance with the policies and procedures adopted pursuant to~~
32 ~~Section 10500.5.~~

33 ~~(d) If the regents deem it to be for the best interest of the~~
34 ~~university, the regents may, on the refusal or failure of the~~
35 ~~successful bidder for a project to execute a tendered contract,~~
36 ~~award it to the second lowest responsible bidder. If the second~~
37 ~~lowest bidder fails or refuses to execute the contract, the regents~~
38 ~~may likewise award it to the third lowest responsible bidder.~~